

Roberts, Plessy and Brown

The Long, Hard Struggle Against Segregation

It was no coincidence that Homer A. Plessy, a 34-year-old middle class “colored man,” purchased a ticket on the train from New Orleans to Covington, Louisiana on June 7, 1892. Nor was it unexpected that he would be arrested when he attempted to board the “whites only” rail car. The purchase and the arrest were part of a well-orchestrated, on-going attack on Louisiana’s Separate Car Act of 1890 by New Orleans blacks with the sympathetic cooperation of The East Louisiana Railway Company which enforced the state’s new discriminatory law with reluctance. Homer Plessy was a perfect candidate for this legal test. He was totally acceptable in manners, demeanor, and attire so that the denial of accommodations pointed to the absurdity of the law and, because he was extremely light in complexion, “the mixture of colored blood [hardly] discernible,” it also emphasized the arbitrariness of the law’s enforcement. For four years the case of *Plessy v. Ferguson* worked its way through the court system so that by 1896 it reached the Supreme Court of the United States. After five weeks of argument, the Court handed down its decision which upheld the Louisiana law and declared separate accommodations based on race constitutional. The separation of the races by law, the court argued, did not compromise equality before the law.

The *Plessy* decision was a milestone in American legal history and a turning point in America’s constitutional law. The highest court in the land set the constitutional foundation for the “separate but equal,” racially discriminatory, Jim Crow legislation which became the hallmark of southern law and northern custom for the next half century. But this decision neither initiated the “separate but equal” principle in law nor settled the question of legal racial segregation. It was based on pre-Civil War legal precedent and became the foil for the most far-reaching court decision of the 20th century. In his statement of the court’s majority opinion in *Plessy*, Justice Henry Billings Brown cited an 1849 decision rendered in his home state of Massachusetts by state

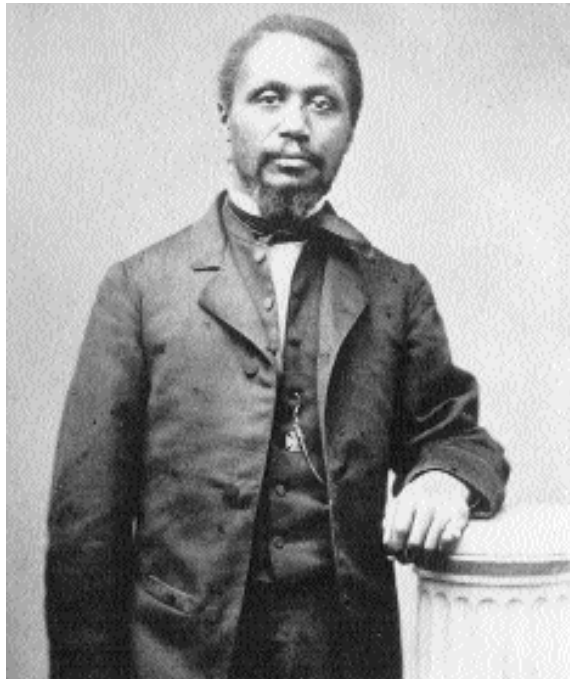
Chief Justice Lemuel Shaw in the case of *Roberts v. The City of Boston*. That case resulted from a black printer’s determination to enroll his daughter at her neighborhood school. Benjamin Roberts violated no law when he took five-year-old Sarah to be enrolled. In fact, a state law instructed that students should attend the school nearest their home. The statute further allowed any student unlawfully excluded from public school to recover damages and when Sarah was refused admittance, Roberts sued the city of Boston under this provision. School authorities argued that special provisions had been made for “colored” students. Since Boston maintained racially segregated schools, that Sarah passed five white schools on her way to the black school, the school board contended, was of no consequence.

In his cause, Roberts retained the talented attorney, abolitionist, and later United States senator, Charles Sumner. Sumner was assisted by the young black abolitionist and activist lawyer from Boston, Robert Morris. This formidable legal team broke new ground in their argument before the court. Invoking “the great principle” embodied in

Charles Sumner,
Attorney in
Roberts v. City of
Boston. Library of
Congress photo.



Robert Morris,
attorney in
Roberts v. City of
Boston. Photo
courtesy of the
Social Law Library,
Boston, MA.



the Constitution of Massachusetts, they asserted that all persons, regardless of race or color, stand as equals before the law. More specifically, they argued racially segregated schools and equality of education are mutually exclusive, that segregation is unconstitutional because it infringed on the civil rights of individuals, and that it is socially and emotionally damaging to both black and white students. "The school is the little world where the child is trained for the larger world of life... and therefore it must cherish and develop the virtues and the sympathies needed in the larger world." The inculcation of caste distinction among citizens, they argued, precluded "those relations of Equality which the constitution and Laws promise to all."

Chief Justice Shaw, unmoved by impassioned oratory about freedom and equality, decided the case on narrow legal grounds, ruling in favor of the right of the school committee to set education policy as it saw fit. The Boston School Committee strongly asserted that right, as the court decision went against Roberts, establishing the principle of segregated education in law in Massachusetts.

Thus, the foundation for the Supreme Court decision in the *Plessy* case was laid. Even more specifically, Sumner and Morris provided the argument which, augmented by modern social science, became that of Thurgood Marshall and the National Association for the Advancement of Colored People legal team in the *Brown* decision in the 1950s. Like the *Brown* case, *Roberts* had been a school desegregation case and, like both *Brown* and *Plessy*, the arguments in *Roberts* had implications far beyond the specifics of the case.

Together, these three landmark decisions tell the history of the struggle for racial justice in America. Each was the result of planning, organization, direct action, and support from the African-American community. Each was also the undertaking of a strong progressive interracial alliance which facilitated the legal effort. It was no accident that Roberts was represented by Sumner, an abolitionist who had provided his legal services to fugitive slaves and the anti-slavery movement on numerous occasions and that Robert Morris was a black abolitionist lawyer. These crusaders against slavery had worked together before and would continue as allies for freedom throughout the Civil War period.

Although these efforts were almost always a product of joint community action, they did not necessarily imply a single African-American opinion. Boston blacks had struggled for decades to provide their children with quality education which, in the late-18th century, meant withdrawing them from the city schools. The Boston School Committee was correct when during the Roberts trial it argued that early in the city's history,

Smith School
engraving; 1849
Boston Directory.



African Americans had petitioned the city to provide for a separate school. Blacks had done so, because teachers and white students in the integrated schools frequently mistreated black students and subjected them to public ridicule. The private African School had been established in 1798 and a generous trust bequeathed to the city in 1815 by a white philanthropist provided adequate funds for the continued support of a separate black school renamed the Smith School. Some black Bostonians felt strongly that separate schools were necessary to educate their children without the degrading experiences of racial prejudice and did not support the efforts to desegregate Boston schools.

Yet, as the physical facilities badly deteriorated at the all-black Smith School, it became clear to many that separated education in the Boston schools was not likely to be quality education for black students. A century before sociologist Kenneth Clark helped NAACP lawyers make the case before the Supreme Court in the *Brown* case, many black Bostonians understood that separation of the races had harmful long-term consequences for the psychological well-being of their children. William Cooper Nell, a community leader-activist in the campaign to integrate Boston schools, related the personal experience that motivated him to become an activist. In 1829, he and two other students were judged as the three brightest students of the Negro school. However, they were not awarded the Benjamin Franklin Medal that was given to white students by the city school board and were not invited to the dinner given in honor of the winners. To satisfy his curiosity, Nell managed to attend the dinner as a waiter. During dinner, Massachusetts Lieutenant Governor Armstrong privately told him that he deserved to be at the dinner alongside the white students. Nell was the child of an economically successful family and the son of a prominent community leader in Boston. Nonetheless, the feeling that he could “never be anything but a nigger anyhow” plagued his sense of self-worth. Segregated education, he believed, was implicated in his diminished self-image.

Although debate over the benefits of integrated education versus black-controlled education continued among Boston blacks, Nell and other parents organized an effective boycott of Boston's black schools. Black activists and White abolitionists challenged segregation policies through petitions, non-violent protests, and the introduction of bills to outlaw Jim Crow regulations. Repeated petitions to the Boston School Committee throughout the 1840s decried the injustice of exclusive schools “solely on account of color” which deprived blacks of the equal privileges and advan-

tages to which they were entitled as citizens. Thus, when Benjamin Roberts brought suit against the city, he did so as part of a series of efforts and strategies by the community to desegregate Boston schools. The interracial legal team of Sumner and Morris was merely presenting before the court arguments and valid grievances black residents had expressed before. The most eloquent desegregation argument revealed the detriments of segregation policies in the lives of Nell and many other African-American children in Boston and elsewhere. “Nursed in the sentiment of caste, receiving it with the earliest food of knowledge, [whites] are unable to eradicate it from their natures... A despised class, blasted by prejudice and shut out from various opportunities, [blacks] feel this proscription from the Common Schools as a peculiar brand...It adds to their discouragements.” No matter that the Massachusetts court was not sympathetic, black people understood only too well, from personal experience.

Justice Shaw, ignoring the moral issues involved, narrowly focused on the question of whether separation by race in public schools violated Robert's right to political, social, and civil equality. When he reasoned that separation of the races does not perpetuate class distinction since existing prejudice in society “is not created by law, and probably cannot be changed by law,” he foreshadowed the racial philosophy basic to 20th-century-segregationist law. Echoing this philosophy, the 1896 *Plessy* decision reflected a dominant perception among whites that the races were somehow fundamentally different, a difference immutable by law. “Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences,” said the court. “If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.” Further, the court flatly rejected *Plessy's* claim, as the Massachusetts court had rejected Robert's contention, that separation marked blacks with “a badge of inferiority.” “If this be so,” wrote Justice Brown, it is only “because the colored race chooses to put that construction upon it.”

These were the assumptions of popular culture of the 19th century which remained strong even by the mid-20th century. It would not be until social attitudes fostered and supported by social scientific evidence, began to reconsider the wisdom of racial hierarchy that the “separate but equal” doctrine would be reevaluated by the U.S. Supreme Court in 1954 with the *Brown v. Board of Education* case. By mid-century, the harmful effects of racial segregation were scientifically documented and could no longer be easily dismissed. During the 1920s, mainstream social scientific

thought had moved from the assumption that mental inferiority and anti-social behavior are racially inherited, to the understanding that environment and social process are the primary determinants of intellect. Gunnar Myrdal's *An American Dilemma* (1944), a widely acclaimed critique of American racism which detailed the cycle of social prejudice and economic deprivation, was one source used by Marshall to urge the Court to reconsider *Plessy*. Further strengthening the argument against segregation was President Truman's report in 1947 from the Committee on Civil Rights which also cited social scientific evidence and called for an end to legally-enforced segregation. The time was right for the Supreme Court to declare decisively that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

Yet, this declaration was a long time in the making and it was the result of more than a century of determined struggle.

Like the overnight sensation who has worked a lifetime for that distinction, the Civil Rights Movement which many Americans assume to have begun in 1954 was a long time coming, with the sacrifice and support of thousands, black and white, committed to racial equality and justice long before *Brown* and even before *Plessy*. The *Plessy* decision, the *Brown* decision, and all those who struggle for racial justice stand on the shoulders of Benjamin Roberts, a man who simply wanted a good education for his five-year-old daughter.

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Oral Histories Capturing Forgotten Moments in Civil Rights History

The names of Farmville, Virginia, or Summerton, South Carolina are not on the lips of the average citizen in thinking about the case of *Brown v. Board of Education*. Yet these communities, and others, also had significant parts in the case as did Topeka, Kansas.

The newly established Brown v. Board of Educational National Historic Site will serve to remind us of the very significant step on the road toward equality, taken in Topeka, but also many steps to desegregate American schools taken elsewhere. This site is located at the Monroe Elementary School. Over 40 years ago, the school was used to educate African-American children separately from white children. Monroe School once again will open its doors, but its mission has been transformed to educate us all. It will also be a reminder to all Americans that equal rights do not come at little cost. The African-American chal-

lenges to "separate but equal" arose in many places. A park dedicated to this historical struggle should connect the events in Topeka, Kansas with those in other states. How can what is known primarily as a legal case be represented through a park exhibit, so that others can share the experience of those who lived through those events?

One way to supplement the historical record is through oral history interviews. Oral histories have been gathered through interviews of persons who lived through the events surrounding these cases, many of whom were participants. In the particular history of *Brown*, these interviews connect legal abstractions with personal experiences. The location of the site at the former Monroe Elementary School and other sites are tangible symbols of the force of the "separate-but-equal" doctrine. At its best, they connect us with what people underwent in forever changing that doctrine. Oral histories help to uncover the actions